

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

REBECCA L. MAYS,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner, Social Security
Administration,

Defendant.

Case No. 10-CV-506-FHM

OPINION AND ORDER

Plaintiff seeks an order remanding this case for a *de novo* administrative proceeding to correct the record. Plaintiff asserts that the first page of Exhibit 8F in the administrative record is incorrect. At the administrative hearing counsel advised the Administrative Law Judge (ALJ) that Dr. Chorley, the author of Exhibit 8F, had changed the information on the first page. The ALJ agreed to allow Plaintiff to submit the amended page. However, the amended page is not contained in the record before the court.

Exhibit 8F is an assessment of Plaintiff's residual functional capacity to do work-related activities. The amended page shows far greater restrictions than the page presently in the record. Plaintiff argues that the amended page is material "because it creates a reasonable probability of a different decision by the Commissioner." [Dkt. 17, p. 2]. Regardless of the level of restriction indicated on the first page of the exhibit, in the narrative portion of the exhibit that is contained in the record Dr. Chorley stated that Plaintiff is unable to maintain a position of comfort for more than 10 minutes, and he expects her to "be 100% disabled until definitive surgical intervention." [Dkt. 10-8, p. 33]. The ALJ

rejected Dr. Chorley's opinion on the basis that the opinion "is not consistent with the objective medical evidence of record." [Dkt. 10-2, p. 17].

Since the ALJ rejected as unsupported by medical evidence Dr. Chorley's opinion which shows Plaintiff is less limited than the amended page shows, the court finds that the amended page is not material and would not have a reasonable likelihood of changing the ALJ's decision. Therefore there is no basis for granting Plaintiff's request for a remand under sentence four of 42 U.S.C. § 405(g). Plaintiff's Motion to Remand [Dkt. 17] is DENIED.

The parties shall adhere to the following schedule. Plaintiff's opening brief is due on or before April 15, 2011. Defendant shall file his response brief on or before June 15, 2011. Plaintiff may file a reply brief on or before June 29, 2011.

SO ORDERED this 24th day of March, 2011.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE